

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Hospitals and Outpatient Facilities Services

(Amendment)

907 KAR 1:014. Outpatient hospital services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A030(2), 194A050(1), 205.520(3)[EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.]

The Cabinet for Health and Family Services has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes ~~[sets forth]~~ the provisions relating to outpatient hospital services for which payment shall be made by the medical assistance program on ~~[in]~~ behalf of both the categorically needy and medically needy.

Section 1. Definitions.

(1) "Department" means the Department for Medicaid Services or its designated agent.

(2) "Emergency condition" or "emergency situation" means a condition or situation

1 which requires an emergency service pursuant to 42 CFR 447.53.

2 (3) "Non-emergency condition" means a condition which does not require an
3 emergency service pursuant to 42 CFR 447.53.

4 Section 2. Covered Outpatient Hospital Services.

5 ~~[Hospital Outpatient Services Covered by the Medical Assistance Program. There are no~~
6 ~~limitations on the number of hospital outpatient visits or services available to program~~
7 ~~recipients.]~~

8 (1) Outpatient hospital outpatient services to be covered, as listed below, shall be
9 prescribed by, or in the case of emergency room services, determined to be medically
10 necessary by a duly- licensed physician, or if applicable, a duly-licensed dentist, for the
11 care and treatment indicated in the management of illness, injury, impairment or maternity
12 care, or for the purpose of determining the existence of an illness or condition in a patient.

13 The services shall be furnished by or under the supervision of a duly-licensed physician,
14 or if applicable, a duly-licensed dentist.

15 (a) Diagnostic services as ordered by a physician.

16 (b) Therapeutic services as ordered by a physician.

17 (c) Emergency room services in emergency situations or for emergency conditions as
18 determined by a physician.

19 (d) ~~[Effective with regard to services provided on or after July 1, 1990,]~~ Drugs,
20 biologicals, or injections administered in the outpatient hospital setting.

21 (2) Outpatient hospital ~~[outpatient]~~ services for maternity care may be provided by an
22 advanced registered nurse practitioner (ARNP) who has been designated by the Kentucky
23 Board of Nursing as a nurse midwife or by a registered nurse who holds a valid and

effective permit to practice nurse midwifery issued by the Cabinet for Health and Family Services ~~[Human Resources]~~.

Section 2. Outpatient Hospital ~~[Outpatient]~~ Services not Covered ~~[by the Medical Assistance Program]~~. The following services shall not be covered by the department:

(1) Items and services which are not reasonable and necessary for or related to the diagnosis or treatment of illness or injury, impairment or maternity care.

(2) Services for which the individual has no obligation to pay and for which no other person has a legal obligation to provide or to pay.

(3) Medical supplies and appliances except those incident to the performance of services in the hospital outpatient department and which are included in the rate of payment established by the department ~~[Kentucky Medical Assistance Program]~~ for outpatient hospital ~~[outpatient]~~ services.

(4) Drugs, biologicals and injectables purchased by or dispensed to a patient.

(5) Routine physical examinations;

(6) A service or treatment provided in an emergency room for a non-emergency condition.

907 KAR 1:014

REVIEWED:

Date

Shannon Turner, J.D., Commissioner
Department for Medicaid Services

Date

Mike Burnside
Undersecretary for Administrative and Fiscal Affairs

APPROVED:

Date

James. W. Holsinger, Jr., M.D., Secretary
Cabinet for Health and Family Services

A public hearing on this administrative regulation shall, if requested, be held on December 21, 2006, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 3, 2006. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: 502-564-7905, Fax: 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:014

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Stuart Owen or Stephanie Brammer-Barnes (502-564-6204)

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the coverage provisions for outpatient hospital services.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions for outpatient hospital services.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions for outpatient hospital services.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the coverage provisions for outpatient hospital services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation eliminates Medicaid coverage of treatment of non-emergency conditions in an emergency room.
 - (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to maintain the viability of the Medicaid program.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by modifying outpatient hospital service coverage as allowed by statute.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation assists in the effective administration of the statutes by maintaining the viability of the Medicaid Program.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect all outpatient hospital service providers participating in the Kentucky Medicaid Program.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment eliminates Medicaid coverage of

treatment of non-emergency conditions in an emergency room.

- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendment will reduce expenditures by approximately \$42.0 million (\$29.0 million federal funds; \$13.0 million state funds) annually.
 - (b) On a continuing basis: DMS anticipates that the amendment will reduce expenditures by approximately \$42.0 million (\$29.0 million federal funds; \$13.0 million state funds) annually.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding are necessary to implement the amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.